



PLANNING COMMISSION MINUTES

CITY OF NOVI

Regular Meeting

NOVEMBER 12, 2014 7:00 PM

Council Chambers | Novi Civic Center | 45175 W. Ten Mile
(248) 347-0475

CALL TO ORDER

The meeting was called to order at or about 7:00 PM.

ROLL CALL

Present: Member Anthony, Member Greco, Member Lynch, Chair Pehrson, Member Zuchlewski

Absent: Member Baratta (excused), Member Giacometti (excused)

Also Present: Barbara McBeth, Community Development Deputy Director; Kristen Kapelanski, Planner; Jeremy Miller, Staff Engineer; Tom Schultz, City Attorney; Pete Hill, Environmental Consultant

PLEDGE OF ALLEGIANCE

Member Zuchlewski led the meeting attendees in the recitation of the Pledge of Allegiance.

APPROVAL OF AGENDA

Moved by Member Greco and seconded by Member Anthony:

VOICE VOTE ON THE AGENDA APPROVAL MOTION MADE BY MEMBER GRECO AND SECONDED BY MEMBER ANTHONY:

Motion to approve the November 12, 2014 Planning Commission Agenda. Motion carried 5-0.

AUDIENCE PARTICIPATION

No one in the audience wished to speak.

CORRESPONDENCE

There was no Correspondence.

COMMITTEE REPORTS

There were no Committee Reports.

COMMUNITY DEVELOPMENT DEPUTY DIRECTOR REPORT

There were no Community Development Deputy Director McBeth said she had nothing to report.

CONSENT AGENDA - REMOVALS AND APPROVAL

There were no Consent Agenda items.

PUBLIC HEARINGS

1. OBERLIN, JSP14-42

Public hearing at the request of Singh Development for Preliminary Site Plan utilizing the Open Space Preservation Option, Woodland Permit, Wetland Permit and Stormwater Management Plan approval. The subject property is 29.9 acres in Section 20 of the City of Novi and located at 48301 Eleven Mile Road on the south side of Eleven Mile Road, west of Beck Road in the R-4, One-Family Residential District. The applicant is proposing a 72 unit development using the Open Space Preservation Option.

Planner Kapelanski said the applicant is proposing a 72 unit single-family residential development using the open space preservation option on the south side of Eleven Mile Road between Beck Road and Wixom Road. To the north of the property across Eleven Mile Road is the Medilodge convalescent home, to the east is a single-family residential home, to the west is the ITC utility corridor and to the south is vacant land. The subject property is currently zoned R-4, One-Family Residential. The site is bordered by RM-1 with a PRO zoning to the north, R-4 zoning to the east and RA zoning to the west and south. The Future Land Use map indicates planned suburban low-rise uses to the north, single family uses for the subject property and the property to the east, educational uses to the south and utility uses to the west. The natural features map does show almost the entire site is covered by either regulated woodlands or wetlands. There are also several wetland areas that are not shown on the natural features map but have been identified in the field and are shown on the site plan.

The applicant is proposing 72 single-family lots. If you recall, a portion of this site was approved for a 50 unit development using the open space preservation option in 2013. The applicant has since acquired additional land and submitted a new plan for consideration. The open space preservation option which the applicant is utilizing is intended to encourage the preservation of open space and natural features. The applicant has designed the site with the preservation of the existing wetlands and woodlands in mind. The wetland and woodland areas along the south portion of the site and along the west property line are proposed to be preserved. Even with the preservation of these natural areas, a significant amount of regulated woodlands are proposed to be removed. The applicant is not able to replace all of these regulated trees on site and has proposed tree replacement plantings off-site at the northwest corner of Eight Mile Road and Garfield Road. That plan, known as Ballantyne, as received Preliminary Site Plan approval and a similar arrangement for tree replacements was approved as part of the previous iteration of the Oberlin plan.

Planner Kapelanski continued noting the planning review recommends approval of the plan noting additional items that should be addressed in the final site plan submittal. With regard to the off-site woodland plantings, as stated in the planning, landscape and woodland review letters, staff and consultants support the proposed plantings as they meet the stated intent of the woodland ordinance. In this case, such a large number of trees will be planted that a new wooded area will be created where previously there was none. The trees will be preserved with a conservation easement. The Planning Commission will need to make a finding that off-site woodland plantings, in this case, would be permitted. The City's environmental consultant, ECT, is here to address any woodlands or wetlands questions that may come up. The landscape review recommends approval of the plan and supports the requested landscape waiver for the lack of a berm along the Eleven Mile Road frontage in order to preserve the existing vegetation. A wetland permit and authorization to encroach into the required natural features setback is required for the proposed impacts. The wetland review notes the applicant has offered to provide wetland enhancement of the existing wetlands at the Ballantyne site to mitigate some of the impacts at the Oberlin site. The wetland review recommends the applicant provide a five year monitoring period for these proposed enhancements. The applicant has maintained that since the enhancements are voluntary and not required additional monitoring should not be

required. Staff has worked with the applicant and staff and the applicant have agreed to a two year monitoring period for the wetland enhancements, which is indicated in the suggested wetland permit approval motion. The engineering, traffic and fire reviews recommend approval with items to be addressed on the final site plan. The Planning Commission is asked to approve the preliminary site plan, wetland permit, woodland permit and stormwater management plan this evening.

Clif Seiber, project engineer representing Singh Development, said the Planning Commission may recall about a year and a half ago this project was before you for approval. At that time, the project size was 20 acres and 50 lots. Since then, Singh Development has acquired the ten acres to the east of that original project and it is now comprised of 30 acres and 72 units. So it's essentially very close to the layout and configuration that you saw before, only with the addition of that ten acres. As Kristen indicated, we are requesting a waiver on the landscape berm that is only 52 feet along the very westerly frontage along Eleven Mile Road. Also as a point of clarification, we will be asking for an increase in the front yard setbacks on lots 14 and 70. It's really not a lot of width variance that we'll be requesting because at the setback that we're requesting we will meet the lot width requirement. So we do plan to go before Planning Commission to ask for an increase in the front yard setback. Finally, at that approval a year and a half ago, the Planning Commission did approve our planting of offsite woodland replacements at the Ballantyne Site and we continue to request the planting of those trees just because there is insufficient room at the Oberlin site to plant all those trees. I think there are 1,174 trees being requested to be planted at the Ballantyne site at Eight Mile and Napier. So with that, I'd be glad to answer any questions you may have.

Chair Pehrson opened the public hearing. No one in the audience wished to speak and there was no correspondence and Chair Pehrson closed the public hearing.

Member Lynch said I just have a couple of question for the wetland consultant, the way to determine if this was the beginning of the Novi-Lyon drain. I mean you have the Rouge wetland area going east and is this part of that or is this part of Huron?

Pete Hill of ECT, the City's environmental consultant, said I believe it's still in the Rouge. I haven't looked back at that recently, but I think the watershed boundary for the Huron-Rouge separation is further to the west.

Member Lynch said ok with respect to the conversation easement, the two year monitoring, what does that entail?

Mr. Hill said we pushed for a monitoring period on that restoration site on Ballantyne. The major goal is that the applicant has is to essentially beautify the wetlands that are there at the proposed park. They want to move essentially one invasive species, reed canary grass that is not a great habitat for anything. So the plan is to excavate that and the purpose of the monitoring is the make sure that doesn't come back. They're basically scooping out that plant and some of the seeds are likely to be in the remaining soils so in those two years that they've agreed to monitor, that might come with monitoring/treatment of invasive species. So for two years they'll make sure these won't come back.

Member Lynch said reed canary is the only invasive species in that area.

Mr. Hill said yes, it's the major one.

Member Lynch said ok I think the DEQ picks up the monitoring enforcement.

Mr. Hill said actually monitoring of that won't be a condition of the DEQ permit, its City only.

Member Lynch said ok so if the homeowner decides to go in there and chop it down, the city would go in there and tell them to plant.

Mr. Hill said correct.

Member Lynch said ok so you're monitoring all the trees. It looks like we're taking a whole bunch of trees from the northwest part of Novi and moving them somewhere else and you can't plant anymore trees on that side, right?

Mr. Hill said as Mr. Seiber said, they are maxing out this site that you see here with a number of replacement trees but all the green spaces are pretty heavily wooded and will remain pretty heavily wooded.

Member Lynch said I understand what you're doing, I fully support it. I just want to make sure we're not going to raise that whole area and be out of character with the rest of the area. I just want to make sure that it's still, from what I understand from the surveys that we've taken with the tax payers, is they still want it to be a somewhat rural area and you're satisfied that what they're planning on doing is still going to maintain that semi-rural flavor in that general area.

Mr. Hill said it will maintain perimeter areas and frontage areas of existing woodlands.

Member Lynch said I like the plan. I think I mentioned that the first time the applicant came in. so I'm in full support of it.

Member Anthony said this is related to the trees. I live in a subdivision that was built by Singh. I love the home and the neighborhood. And one of the things that I liked that Singh did when they built our neighborhood is there are a couple very old trees that they were still able to leave. They're in front yards of some of the homes. It's a nice feature when you drive through a new subdivision but you still can retain one of those old historic trees. I was looking at the tree report and specifically on the trees that were designated for removal there were five trees that were thirty inches or larger. So not that many, but the thought crossed my mind about has any consideration been given if they could do something similar to that. The tree was still within the lot line but they were able to preserve it but it not be in the home footprint and be far enough away to be able to complete construction. Was that considered at all for these five trees that were larger than 30 inches and two of them that were 50 inches or larger. Or could that be considered if it wasn't.

Mr. Seiber said some of those could be saved. Novi's ordinance requires anything that's within the lot area, the applicant needs to post financial guarantees because it's often times difficult to save those trees because of construction equipment, activity and excavating for basements. But in some cases those rear yard areas; there are opportunities to preserve those trees. We could put woodland protection fencing around the dripline and then try to save it.

Member Anthony said you can stay outside of the dripline so that you're not cutting into base.

Mr. Seiber said of course if you did that that would give it the best chance of surviving. So there are some opportunities. I know your consultant suggested that some efforts be made to try to save as many of those trees as possible and we plan to do so.

Member Anthony said ok so would you object to us incorporating in the motion that for the trees that are 30 inches in diameter and larger that you would at least work with staff or the consultant to try and save them.

Mr. Seiber said we have no problem with that.

Member Anthony asked staff if that can be done.

Planner Kapelanski said the motion maker should add to the woodland permit approval motion that the applicant try to save the larger trees if possible.

Member Greco said thank you for coming before us. I think the project looks very good again. I liked it the first time as well and I like what we're doing with the planting of so many trees at the different location at Ballantyne that we saw in front of us a couple months ago. With that, I'd like to make a motion.

Moved by Member Greco and seconded by Member Lynch:

ROLL CALL VOTE ON THE PRELIMINARY SITE PLAN WITH OPEN SPACE PRESERVATION OPTION APPROVAL MOTION MADE BY MEMBER GRECO AND SECONDED BY MEMBER LYNCH:

In the matter of Oberlin, JSP14-42, motion to approve the Preliminary Site Plan with Open Space Preservation Option based on and subject to the following:

- a. **Zoning Board of Appeals variance for the deficient lot widths of lots 14 and 70 (64.28 ft. required, 43 ft. and 50 ft. provided);**
- b. **Planning Commission waiver for the lack of a berm in areas of preserved woodlands along Eleven Mile Road which is hereby granted;**
- c. **Planning Commission approval to permit 1,173.48 off-site woodland replacement tree credits on the private property at the northwest corner of Eight Mile and Garfield Roads, which is hereby granted subject to the on-site and off-site conservation easements required by the Ordinance being provided; and**
- d. **The findings of compliance with Ordinance standards in the staff and consultant review letters, and the conditions and items listed in those letters being addressed on the Final Site Plan.**

**This motion is made because the plan is otherwise in compliance with Article 4, Article 24 and Article 25 of the Zoning Ordinance and all other applicable provisions of the Ordinance.
*Motion carried 5-0.***

Moved by Member Greco and seconded by Member Lynch:

ROLL CALL VOTE ON THE WETLAND PERMIT APPROVAL MOTION MADE BY MEMBER GRECO AND SECONDED BY MEMBER LYNCH:

In the matter of Oberlin, JSP14-42, motion to approve the Wetland Permit based on and subject to the following:

- a. Applicant shall ensure the wetland restoration area on the Ballantyne site will be monitored and maintained for a two year period per the standards outlined in the wetland review letter dated October 2, 2014; and
- b. The findings of compliance with Ordinance standards in the staff and consultant review letters, and the conditions and items listed in those letters being addressed on the Final Site Plan.

This motion is made because the plan is otherwise in compliance with Chapter 12, Article V of the Code of Ordinances and all other applicable provisions of the Ordinance. *Motion carried 5-0.*

Moved by Member Greco and seconded by Member Lynch:

ROLL CALL VOTE ON THE WOODLAND PERMIT APPROVAL MOTION MADE BY MEMBER GRECO AND SECONDED BY MEMBER LYNCH:

In the matter of Oberlin, JSP14-42, motion to approve the Woodland Permit based on and subject to the following:

- a. Planning Commission approval to permit 1,173.48 off-site woodland replacement tree credits on the private property at the northwest corner of Eight Mile and Garfield Roads, which is hereby granted subject to the on-site and off-site conservation easements required by the Ordinance being provided;
- b. The applicant making efforts and working with staff and consultants to save those trees 30 inches and larger with replacement credits required being adjusted accordingly;
- c. The findings of compliance with Ordinance standards in the staff and consultant review letters, and the conditions and items listed in those letters being addressed on the Final Site Plan.

This motion is made because the plan is otherwise in compliance with Chapter 37 of the Code of Ordinances and all other applicable provisions of the Ordinance. *Motion carried 5-0.*

Moved by Member Greco and seconded by Member Lynch:

ROLL CALL VOTE ON THE STORMWATER MANAGEMENT PLAN APPROVAL MOTION MADE BY MEMBER GRECO AND SECONDED BY MEMBER LYNCH:

In the matter of Oberlin, JSP14-42, motion to approve the Stormwater Management Plan, based on and subject to the findings of compliance with Ordinance standards in the staff and consultant review letters, and the conditions and items listed in those letters being addressed on the Final Site Plan. This motion is made because it otherwise in compliance with Chapter 11 of the Code of Ordinances and all other applicable provisions of the Ordinance. *Motion carried 5-0.*

2. NOVI TEN TOWNHOMES, JSP14-18, WITH REZONING 18.707

Public hearing of the request of Toll Brothers for Planning Commission's recommendation to City Council for rezoning of property in Section 26, on the south side of Novi Road, east of Ten Mile Road from I-1, Light Industrial and OS-1, Office Service to RM-1, Low Density, Low-Rise Multiple-Family Residential with a Planned Rezoning Overlay. The subject property is approximately 20.9 acres.

Planner Kapelanski said the applicant is proposing a rezoning with PRO to develop 93 attached condominium units on a 21 acre site in the southeast quadrant of the intersection of Novi Road

and Ten Mile Road. The parcels are currently made up of vacant land. Land to the north of the proposed parcel lines and fronting on Ten Mile Road is vacant. To the east is industrial land and the Novi Ridge apartments. To the west is a Walgreen's store, a bank and River Oaks West multiple-family development, which also borders the property on the south. Also to the south are the Sports Club of Novi and the Novi Ice Arena. The subject property is zoned I-1, Light Industrial and OS-1, Office Service. The applicant has proposed RM-1 zoning. The property to the north is zoned I-1 and OS-1. The property to the east, opposite the railroad tracks, is zoned I-1 and RM-1. The property to the south is zoned I-1 and RM-1 and property to the west is zoned OS-1 and RM-1. The future land use map indicates community office and industrial uses for the subject property as well as the property to the north. The properties to the east are planned for industrial uses. The properties to the south are master planned for industrial and multiple-family and the area to the west is planned for community office uses. The proposed rezoning is contrary to the current recommendations of the Future Land Use map. There are significant amounts of natural features on the site. Impacts to wetlands and wetland buffer areas have been minimized to the extent practical. However, woodland impacts are unavoidable if the site is to be developed for residential use. Permits for wetland and woodland impacts would be required at the time of site plan review and approval.

The applicant is proposing 93 attached condominium units. Given it's a history as a former orchard, a large part of the site contains contamination that must be mitigated for residential use. The applicant intends to remove the affected dirt and construct a berm along Ten Mile Road with the fill. This will be further evaluated at the Preliminary Site Plan submittal when more detailed plans will be required. Planning staff has recommended approval of the proposed rezoning to RM-1 with a PRO as the plan proposes a reasonable alternative to the recommendations of the master plan for the reasons outlined in the planning review letter. The plan also meets several goals, objectives and implantation strategies in the master plan. A PRO requires the applicant propose a public benefit that is above and beyond the activities that would occur as a result of the normal development of the property. The applicant has proposed the construction of a pathway for public use through the site from Nick Lidstrom Drive to the north property line for a connection to a future development to the north as well as an offsite pathway to the new Novi Dog Park and a connection to the existing pathway along Nick Lidstrom Drive. Pedestrian directional signage is proposed along the pathways. The applicant has also offered to preserve the remaining onsite natural features with a conservation easement. Ordinance deviations have been requested by the applicant for inclusion in the PRO Agreement for the following items: to allow the proposed cul-de-sac to be built to standards less than the general layout standards for local streets, deficient same-side driveway spacing; reduction in minimum berm height along the southern property boundary; lack of berms along the east, west and north property boundaries; façade waiver for the overage of siding and asphalt shingles; building orientation to the property line greater than 45 degrees; off-street parking, maneuvering lanes and service drives covering more than 30% of the required front, side and rear yard building setback areas; and a reduction in the required building setback for the southeastern most building. The Facade Review recommends approval stating the proposed facades would be considered enhancements over the minimum ordinance requirements. The engineering, traffic, landscape, wetland, woodland and fire reviews all recommend approval and note items to be addressed on the Preliminary Site Plan submittal. The Planning Commission is asked to make a recommendation on the proposed rezoning with PRO this evening.

Mathew Quinn spoke on behalf of Toll Brothers. We've got Jason Minock, the Toll division vice president; Mike Noles, the Toll land development vice present; Pat Keast for engineering; and Jim Allen the landscape architect. They are all ready to answer any questions that you have tonight. For this rezoning we appreciate the favorable letters from the staff and consultants. I

think it shows that they see the merit to this rezoning and how it fits in with the future master plan when it's modified again here sometime this year or next year. And ending up with 92 beautiful homes which are 2,000 to 2,600 square feet each, will bring a good tax value to the city. With all of the nature areas that they're saving, it will be a great benefit to the city. The path that they're going to take to the dog park not only stops at the dog park, it goes all the way through the dog park and ends up at the driveway there on Nick Lidstrom Drive, south of the ice arena. So that's going to asphalt path and it will be open to the public all the way. Plus, as was stated, the path through the project to the north, whenever the development along Ten Mile is developed, we will already have constructed a bridge across that area that's there so that the next project will just be able to continue that right to Ten Mile. So you'll have the pedestrian bike link from Ten Mile all the way to ice arena and sports club. So we're here to answer any questions that you may have this evening.

Chair Pehrson opened the public hearing. No one wished to speak and there was no correspondence and Chair Pehrson closed the public hearing.

Member Lynch said I was unable to download the whole package, I thought we already approved this, but apparently what we approved on was just a concept plan?

Deputy Director McBeth said you may recall that this came to the Master Plan and Zoning Committee for a brief review and discussion.

Member Lynch said ok I guess since I didn't read the detail, I was comfortable with the prior review and now that it's presented I'm certainly comfortable with what they're proposing. I think it is a benefit in the area and I don't have any problem changing the zoning. I think it actually is a better use of the land than what we currently had it zoned so I'm in support of this.

Member Anthony said I was just going to echo Member Lynch's comments. I think it attracts the kind of residential development that I know Toll Brothers is keen on and the product that they're going to bring in. I think it's going to be a great addition into this area. I would also be in favor of this.

Member Greco said when I first looked at this project and I saw the location, I thought 'uh-oh, what is it now?' because we discussed this property before but then once I saw it, I was very happy with the project. My one question or concern is, because I'm regularly on Nick Lidstrom Drive going to the sports club, with the townhomes going in there without some going to the north and a pathway going there, is Nick Lidstrom Drive as the only way in and out to what will now be the townhomes, sports club, and ice arena? It looks like staff and everybody is satisfied that that drive, at least for right now, can satisfy that.

Mr. Quinn said I think the traffic study showed 600 trips per day coming out of here, one way trips. With the traffic light at Novi and Nick Lidstrom, it's a timed light so it senses the traffic. I don't think that the traffic consultant had any problems with the traffic flow at all.

Member Greco said that concludes my comments. I will be supporting this.

Member Anthony said I like this development too and I like the rezoning, I think it fits better. Kristen, I might have misunderstood you, did you say a berm along Ten Mile was part of this?

Planner Kapelanski said that will be part of this. As part of the remediation for the contamination on that site, they need to put that dirt somewhere.

Member Anthony said what type of contamination is that?

Planner Kapelanski said I believe its arsenic contamination.

Mr. Quinn said this is an old orchard. So its arsenic that was applied to the apples and the trees and it's been there for ages. So it's going to be scraped off and then along Ten Mile Road it'll be created into a berm that will be capped and that's allowed by the MDEQ.

Member Anthony said are we viewing that property along Ten Mile as being developed at some point in the future?

Planner Kapelanski said it would still be available to be developed. It would remain OS-1 and I-1. In some instances, particularly if there is parking in the front yard of an I-1 district, a berm is required to screen that parking. So a berm could work well. I don't know what the future plans are as far as what the owner of the property will do.

Member Anthony asked what are the continuing obligations you would have in maintaining that berm with the arsenic contamination.

Mr. Quinn said it's my understanding that it's going to be seeded. So you'll have the grass growing on the berm and so that keeps the dirt stationary underneath the sod or seed.

Member Anthony said and this property in the berm has open access to people on Ten Mile Road walking down.

Mr. Quinn said there's no sidewalk there at this point in time. Any development in the future would have to put a sidewalk there.

Mike Noles, Toll Brothers, said we're cleaning this up to what the MDEQ calls residential standards. So there's a couple different ways that you can handle arsenic tainted soils. The arsenic was used as a pesticide on apple orchards for fifty years and we still find that in historic orchard areas. And for residential standards, you'd have to have three feet of clean soil on top of it. They just don't want direct contact with that. Now depending on what happens on this property, it could be developed as residential in the future because we'll be following those MDEQ residential standards. However, the standards are a little bit lighter in commercial, industrial, or office uses where you can put it underneath parking lots and pave a parking lot on top of it and that suffices for the MDEQ remediation standards for remediation of those soils. So essentially what you're doing is making it not accessible to direct contact and that is acceptable to the MDEQ and that's what we'll be doing in this particular case.

Member Anthony said so let me ask a few questions. So I would assume that the property that the apartments are on is one separate legal parcel so you obtain your residential closure. Are you submitting the wrap to the MDEQ for their review and approval?

Mr. Noles said yes that's right. So the 21 acres subject to the rezoning this evening will have closure, no further action required, from the environmental scientists who originally tested the soils and determined the chemistry. So they'll be out there full time during the remediation to ensure that all of it is removed from the residential site so that we can have a clean closure for that site.

Member Anthony said sure and then the other site where you are building the berm, that's a separate legal parcel?

Mr. Noles said it will be, yes. Currently, its one legal parcel but we're splitting it into two legal parcels.

Member Anthony said so at the time when you first acquired the property, was it all one parcel or two separate?

Mr. Noles said well we haven't acquired any property yet. So we have a contract to acquire the property, so it's all still one legal parcel.

Member Anthony said he understood. So will you be acquiring the property with the berm?

Mr. Noles said no, we will not be acquiring the property with the berm. We will just acquire the 21 acres subject to the rezoning this evening.

Member Anthony said do you know if this property is currently designated as a facility with MDEQ.

Mr. Noles said it is not a facility. The DEQ does not designate historical use of arsenic as a pesticide as a facility or the whole state would be a facility.

Member Anthony said but there's still a need to prevent exposure to residential property.

Mr. Noles said yes, there are MDEQ requirements for residential development and that is one of them for sure.

Member Anthony said ok, let's focus on the property that's left to the north because it's clear this development you'll have remediated the arsenic. It won't be there. You'll go through DEQ review. So now let's look back up at the property at the north where the arsenic is then placed as the berm. That now becomes the responsibility of the owner for the property to the north. Is that portion designated as a facility?

Mr. Noles said no.

Member Anthony said how then, if we're not designated as a facility for the place where the arsenic is, yet it presents hazard or risk to the residential property, are we assured that the owner of the property to the north will maintain their continuing obligations of that berm. Even though there is no sidewalk there, it's still open. You still have kids that ride their bikes there. I mean I look at the aerial photo and you see all the dirt trails and bike trails through there. So you know that they're riding their bikes through that area. So I mean what kind of controls do we have to ensure that the berm, with its sod and cover, will be inspected and maintained. It would be called continuing obligation so that it does prevent future exposure.

Mr. Noles said MDEQ does specify what those continuing obligations are and their different depending on how you ultimately dispose of the soils. So there are some areas of the site that have steeper slopes. That if we were to do this in a different configuration, it would require monitoring wells over the years and periodic testing just to watch that. But in this particular application and the way that we're doing it, following the MDEQ requirements, there are very

little if any requirements going forward once we have closed the site. We're remediated through residential standards with the cap.

Member Anthony said McDowell's is a good, reputable firm. They do a great job. So the development that you own, I'm good with that. I'm sure the way the berm will be initially constructed will be fine because that also I assume be under you environmental consultants review. So I'm fine with that. Where I have the concern and part of the problem here is that they don't own it and without a facility designation on the property, I don't know if DEQ has any legal jurisdiction in order to ensure its fine throughout the years. Arsenic is a really difficult thing in our state. I don't think the state has any legal jurisdiction to do inspections and ensure that that cap for that berm is maintained. And we do know, from aerial photos and from walking and inspecting the property, there are trails back there where people are accessing the property and you can wear a trail within that and it causes problems. And this may be independent of your development because there's a new owner, but it creates a new issue for us in how do we ensure that someone is inspecting and maintaining that the landscaping is being kept in order and there's no bare spots. We can require a geo-tech style that is put down before it's sodded or landscaped, therefore, you have an obvious visual site in the event that you have wearing and boom there is the orange tech style, or whatever color it is, you see it and then you know that some violation is issued for the owner to repair. The burden is going to fall on the city to inspect because with DEQ, if this is not a facility, they are not going to have any jurisdiction on it. You know what, it's probably better not to make it a facility at this time. But we still need some mechanism in order to inspect and require maintenance on that berm.

City Attorney Schultz said right. So the handy thing for this particular developer is there is the opportunity to put in place some mechanism. This is a PRO. There's a contract between the property owner and the city. As part of that overall contractual relationship, we would have the ability to make sure that, even the north property, is properly documented in some sort of agreement accorded against the property to make sure all those things happen. But I guess I would also say this is their proposal as to what to with the development. As part of the city's future review, we're going to decide whether or not that plan actually works. If it doesn't work, they're going to have to find some other way to deal with that dirt but will continue to have the opportunity to do all of the things that you said because the city's engineer is taking a look and telling us what we need to do to make sure this is safely done.

Member Anthony said and it's important that there is a little bit more detail given to you here in that the problem with arsenic, in that it was used for agricultural purposes, is that there's a clause in DEQ's definition of contamination that a release must occur first. There's an exemption for releases if it's an agricultural chemical applied according to the rules of the manufacturer. That's how arsenic, above a residential exposure level, has a risk for residential that you want to remove it but yet doesn't trigger your facility designation. It doesn't mean that it doesn't pose a human health risk, it means that the regulatory loop hole prevents it. It can be used to not trigger it as a facility. I don't know how to incorporate that. It just creates a new issue up there on Ten Mile Road.

City Attorney Schultz said so if the Planning Commission is ok with concept as a general proposition without all of the final details, then that would be your recommendation to council. That council will decide whether it's ok with that. Then what they do at the council level is they direct our office to work with the administration and consultants to draft the agreements. That's the point which we raise those issues. We have the minutes of the Planning Commission and everybody hearing their concerns. With our environmental people to make sure that everything we're supposed to do can be done. Or we decide that we don't think it can be done.

Member Anthony said is there a way to add in the approval that somewhere in the agreement that staff works with the owner of the northern property to define continuing obligations to prevent future exposure above DEQ residential criteria. The reason I word it that way is because if it's worded according to DEQ regulations, it fits the loop hole and we would do nothing. But if we say that continuing obligations to prevent human exposure based on DEQ residential levels, now you've worked around that exclusion.

City Attorney Schultz said so the short answer is we will take those comments and concerns and make sure that our consultants for the city understand that and if that turns out that that's the recommendation, then absolutely. There is a mechanism in the agreement to do exactly that if that's what the city's consultants decide pertinent.

Member Anthony said ok, alright. I have no problem with the development. It's just once you move the arsenic up to Ten Mile in just a berm, it's just another issue we need to address.

Moved by Member Greco and seconded by Member Anthony:

ROLL CALL VOTE ON THE NOVI TEN TOWNHOMES WITH ZONING MAP AMENDMENT 18.707 APPROVAL MOTION MADE BY MEMBER GRECO AND SECONDED BY MEMBER ANTHONY:

In the matter of the request of Novi Ten Townhomes JSP14-18 with Zoning Map Amendment 18.707 motion to recommend approval to the City Council to rezone the subject property from I-1 (Light Industrial) and OS-1 (Office Service) to RM-1 (Low Density Low-Rise Multiple-Family Residential) with a Planned Rezoning Overlay for the development of a 93 unit condominium project. The recommendation shall include the following ordinance deviations:

- a. Construction of proposed cul-de-sac to standards less than the general layout standards for local streets as described in the traffic review letter dated September 9, 2014;
- b. Deficient same-side driveway spacing for south access drive (84 ft. provided, 105 ft. required);
- c. Reduction in minimum berm height from 6 ft. to 4-5 ft. along the southern property boundary;
- d. Lack of berms along the east, west and north property boundaries;
- e. Section 9 façade waiver for the underage of brick and overage of siding and asphalt shingles;
- f. Building orientation to property lines greater than 45° (50°-90° proposed);
- g. Off-street parking, maneuvering lanes, service drives and/or loading areas covering 47% of the required front, side and rear yard building setback areas (maximum 30% coverage permitted);
- h. Reduction in required building setback for the southeastern most building (75 ft. required, 66 ft. provided);

And subject to the following conditions:

- a. Applicant must satisfy items i. through iv. under point 12.C in the traffic review letter dated September 9, 2014;
- b. Applicant must provide understory plantings on the proposed berm along the southern property boundary to assure adequate buffering;
- c. Applicant relocating interior sidewalks further away from the proposed roadway where feasible as indicated in the applicant's response letter;
- d. Applicant providing pedestrian style lighting along the frontage of City streets as indicated in the applicant's response letter;

- e. The staff and council will work with the owner and developer at the time of contract negotiations regarding the arsenic issues raised by Member Anthony during the public hearing and comments; and
- f. The findings of compliance with Ordinance standards in the staff and consultant review letters and the conditions and items listed in those letters begin addressed on the Preliminary Site Plan.

This motion is made because:

- a. The applicant has presented a reasonable alternative to the proposed Master Plan designation of Community Office and Industrial Research Development and Technology as outlined in the planning review letter;
- b. The proposed property lines maintain a significant buffer (approximately 350 ft.) from the adjacent railroad and industrial uses to the east of the subject property;
- c. The proposed multiple-family use would complement the existing multiple-family uses to the south and in the general area;
- d. The plan meets several goals, objectives and implementation strategies included in the Master Plan for Land Use as outlined in the planning review letter;
- e. The applicant has made an effort to minimize impacts to on-site wetlands to the extent practical and has offered to preserve all remaining natural features via a conservation easement; and
- f. The site will be adequately served by public utilities and the proposed zoning and proposed use represents fewer peak hour trips than the current zoning would require.

MATTERS FOR CONSIDERATION

1. APPROVAL OF THE OCTOBER 8, 2014 PLANNING COMMISSION MINUTES

Moved by Member Lynch and seconded by Member Greco:

VOICE VOTE ON THE OCTOBER 8, 2014 PLANNING COMMISSION MINUTES APPROVAL MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER GRECO:

Motion to approve the October 8, 2014 Planning Commission Minutes. *Motion carried 5-0.*

2. APPROVAL OF THE OCTOBER 22, 2014 PLANNING COMMISSION MINUTES

Moved by Member Lynch and seconded by Member Zuchlewski:

VOICE OVER VOTE ON THE OCTOBER 22, 2014 PLANNING COMMISSION MINUTES APPROVAL MOTION MADE BY MEMBER LYNCH AND SECONDED BY MEMBER ZUCHLEWSKI:

Motion to approve the October 22, 2014 Planning Commission Minutes. *Motion carried 5-0.*

CONSENT AGENDA REMOVALS FOR COMMISSION ACTION

There were no Consent Agenda Removals.

MATTERS FOR DISCUSSION

Chair Pherson said I'd like to bring a point forward relative to the woodland preservation tree relocation comments that have been about and get some feedback from Mr. Hill and Barb. I didn't think it was pertinent based on the public hearing of Oberlin to address this because we'd already gone 90% of the way with them. We've seen this now with this particular situation and with the Rose Senior Center. We're moving trees and forests that are pretty mature growth areas

from one place to another and I don't know that there's a solution where we can revise or take a look at the language associated with that subject matter. It might not be all of woodland preservation or the tree relocation. It might be something else because there seems to be some concern while we're doing the correct thing, we're taking a lot of that old growth away and replacing it with brand new saplings. I wanted to see if there was a way to find a middle ground.

Mr. Hill said that does make sense. Something that might be considered is the city might want to take a look at and review the woodland ordinance language. One specific thing that can be considered is to revise the language to basically have a maximum woodland removal percentage. I know some other municipalities work with that. I don't have a lot of specifics because I don't do too much work with other municipalities. For sites like we saw tonight, basically the preliminary plan wouldn't be approved until they hone down impacts within that maximum impact number or percentage would be for a given site.

Chair Pehrson said I think we saw even to the extent with the developer in this case for a 30 inch tree is willing to look at the idea of saving those. It's a small victory that you can save some older growth.

Deputy Director McBeth said I think you've raised a number of good points and we can take a look at the ordinance to see if there are any other best practices in the area and see what other communities have done. We're happy to take that up and look at that and present it to the Planning Commission. Also in the past we've had some education kind of sessions with our consultants as well. We can ask ECT to come out and talk to us a little bit about the woodland and wetland ordinances as they exist and if any ideas come up we can talk about that and potentially look at incorporating some changes to those.

Member Lynch said actually you did a much better job articulating what I was thinking. When the homeowners come in they talk about things that they want Novi to stay the same. It's the character. You actually put together an implementation plan on what do we need to do as a commission and as a city with our ordinance to save the character of the city. I didn't like to see all those trees go. Basically the whole site is going to change although it looks like they're going to save a lot of trees and I trust that Singh will do a good job. I just don't want the city's character to change. This is budget time too so they might want to put something in the budget in order to do that because I think that's important to the tax payers too.

Deputy Director McBeth said maybe after the first of the year we can ask ECT to come out and get us a primer on that again.

SUPPLEMENTAL ISSUES

There were no Supplemental Issues.

AUDIENCE PARTICIPATION

No one in the audience wished to speak.

ADJOURNMENT

Moved by Member Lynch and seconded by Member Greco:

VOICE VOTE ON MOTION TO ADJOURN MADE BY MEMBER LYNCH AND SECONDED BY MEMBER GRECO:

Motion to adjourn the November 12, 2014 Planning Commission meeting. *Motion carried*

5-0.

The meeting was adjourned at 8:00 PM.

Transcribed by Valentina Nukulaj
November, 2014
Date Approved:

Richelle Leskun, Planning Assistant
Signature on File